IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE
and
HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL No.1437 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/09/2004 in W.P.No.15941 OF 2004 on the file of the High Court.)

Between:

S.Syeda,
S/o Mahaboob Saheb,
R/o Vinukonda,
Guntur District.

.....
APPELLANT

AND

1. The Collector (Panchayat Wing),
   Guntur, Guntur District
2. M.V.Appa Rao,
   S/o Ramprasad,
   R/o Kothapeta,
   Vinukonda, Guntur District
3 P.Purnachandra Rao,
   S/o Bikshalu,
   R/o Samathanaringoloure, Vinukonda, Guntur District

.....RESPONDENTS

Counsel for the Appellant: : Mr. C.V.MOHAN REDDY

Counsel for the Respondent No.1: G.P. FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for Respondents No.2 & 3 : Mr. K.S.Murthy

The Court made the following :

JUDGMENT: (Per Hon'ble the Chief Justice)

Sarpanch of Vinukonda Gram Panchayat was placed under suspension for certain irregularities alleged to have been committed by her in the administration of Gram Panchayat. Appellant, who was Upa-Sarpanch, obviously was asked to take over the charge from the Sarpanch. Appellant was asked to take over the charge in view of the provisions under Section 26 of Andhra Pradesh Panchayat Raj Act, 1994 (in short 'the Act') and he had been discharging duties of Sarpanch. In the meanwhile, respondent Nos.2 and 3 approached this Court by way of W.P.No.14596 of 2004 making grievance as regards

non-consideration of their representation dated 15-07-2004 stating that even against the Upa-Sarpanch, there were allegations of certain irregularities committed by him when he had discharged the duties as Sarpanch during the period 1995 to 2001. Therefore, he is not a person fit to be made Sarpanch

in-charge including the account books of the Gram Panchayat. Writ Petition of respondents No.2 and 3 was disposed of by this Court, directing the Collector (Panchayat Raj Wing) to consider the representation and pass appropriate orders thereupon.

The Collector (Panchayat Raj Wing), Guntur, on 27-08-2004 passed the impugned order stating that the orders issued in proceedings dated 29-06-2004 keeping the Upa-Sarpanch as Sarpanch in-charge are set aside pending finalisation of appointment of temporary Sarpanch and pending finalisation of action against Upa-Sarpanch. Order of the Collector further stated that as against Upa-Sarpanch, on 09-07-2003 a show cause notice was issued as to why an amount of Rs.4,89,314/- be not recovered from him. The show cause notice dated 09-07-2003 was issued in the background that appellant while acting as Executive Officer in-charge of Vinukonda Gram Panchayat had shown some purchases of material in the record of Gram Panchayat without any resolution of Gram Panchayat authorising him to make such purchases and there was no record to show that the said material was actually delivered to the Gram Panchayat and was utilised for public purpose. As a result of the alleged action, the loss stated to have been caused to the Gram Panchayat is to the tune of Rs.4,89,314/-. The order impugned in the writ appeal also pointed out that as against the show cause notice dated 09-07-2003, appellant had also filed his reply on 23-07-2003. Without taking into consideration the reply to the show cause notice and without saying anything further, the Collector passed the order impugned in the writ petition setting aside the order appointing the Upa-Sarpanch as Sarpanch in-charge. Learned single Judge before whom this order was challenged dismissed the writ petition by taking

the view that *prima facie* the

Upa-Sarpanch appears to have incurred disqualification as provided under Section 19(2)(i) of the Act, namely that he is in arrears of dues to the Gram Panchayat. Challenge in the appeal is to the said order.

We have heard learned counsel for the parties. Learned counsel for the appellant submits that the order passed by the Collector is not in consonance with law. There is no order passed by the competent authority under the provisions of the Act disqualifying the appellant Upa-Sarpanch to act as Sarpanch in-charge in place of Sarpanch under suspension and debarring him from holding the charge of Sarpanch. Only proceeding pending against Upa-Sarpanch is issuance of show cause notice, which has been followed by appropriate reply by the appellant, but no action has been taken thereafter. Therefore, there is no legal impediment in the appellant discharging the functions of Sarpanch in accordance with the provisions of Section 26 of the Act.

Learned counsel for respondents No.2 and 3 submits that there are serious allegations against the appellant in the show cause notice and rightly, the Collector has passed the impugned order and the appellant should not also be made

in-charge during the period the office of Sarpanch is vacant because of her suspension. He submits that in case submission of the appellant is accepted, it will amount to giving rise to an illegal order of putting the same person in-charge against whom serious charges of

financial impropriety are levelled. He further submits that there is no power under the Act to suspend the
Upa-Sarpanch.

We have given due consideration to the submissions made at the Bar and are of the view that the order passed by the Collector is not in consonance with law and deserves to be set aside and for that reason, the writ appeal also deserves to be allowed and order of the learned single Judge deserves to be set aside.

Section 249 of the Act empowers the District Collector to remove the Sarpanch, President or Chairman and to put under suspension Sarpanch or Upa-Sarpanch in certain eventualities. Therefore, the submission of learned counsel for respondents 2 and 3 that there is no such power under the Act is misconceived.

Once the Sarpanch is put under suspension under sub-section (6) of Section 249 of the Act, Section 26 of the Act comes into operation which says that when the office of Sarpanch is vacant, the Upa-Sarpanch shall exercise the powers and perform the functions of the Sarpanch until a new Sarpanch is declared elected and assumes office. Sub-section (3) also visualises a situation when the office of Sarpanch is vacant and Upa-Sarpanch is also under suspension or there is a vacancy in the office of Sarpanch, that power can be exercised by the Collector to make someone else discharge the functions of a Sarpanch. In the instant case, there is no order passed

till date by the Collector under the provisions of the Act putting the appellant under suspension. Till the date of passing of the impugned order, appellant continued to be Upa-Sarpanch, who was also discharging the functions of a Sarpanch. The only proceedings as noticed by us are at the stage of show cause notice issued on 09-07-2003 to which reply was submitted by the appellant on 23-07-2003, but it has not resulted in passing a final order. The view expressed by the learned single Judge that appellant has suffered disqualification is also not in consonance with law. A person would be in arrears of dues to Gram Panchayat provided there is an order passed against such person holding him liable for certain dues. There is no final order as yet passed against the appellant. Show cause notice says that the appellant must show cause why he be not asked to pay to the Gram Panchayat for the alleged loss. Whether or not the appellant is liable to make good the loss or is responsible for the loss, are questions, which are yet to be decided by the Collector concerned, who is yet to consider the reply submitted by the appellant. Till a final order is passed, it cannot be said that appellant is in arrears of any dues payable to the Gram Panchayat. Therefore, till date there is no impediment in the appellant in discharging his functions as Sarpanch of Vinukonda Gram Panchayat and since he is Sarpanch of Vinukonda Gram Panchayat, he is entitled as of right to discharge the functions of Sarpanch by virtue of Section 26 of the Act.

Accordingly, the appeal is allowed and impugned order is

set aside, and the writ petition is also allowed and the impugned order therein also is set aside. We make it clear that allowing the writ petition will not prevent the Collector from proceeding to pass appropriate orders in the proceedings taken out against the appellant for which show cause notice has already been issued or to pass orders under Section 249 of the Act against the appellant in case the Collector is satisfied that the order has to be passed after issuing show cause notice to the appellant.

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DEVINDER GUPTA, C.J.

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B.SESHASAYANA REDDY, J

20-09-2004

bsc

To

1. The Collector (Panchayat Wing),
   Guntur, Guntur District
2. Govt. Pleader for Panchayat Raj & Rural Development, High Court buildings, Hyderabad (OUT).
3. 2 C.D. copies